

IT 00-20

Tax Type: Income Tax

Issue: Job Training Expense Credit (Disallowed)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC Co.,
Taxpayer**

**No.
FEIN:
Tax yr.: 1990, 1991, 1992**

**Charles E. McClellan
Administrative Law Judge**

**ORDER ON TAXPAYER'S MOTION FOR
SUMMARY JUDGMENT AND DEPARTMENT OF
REVENUE'S CROSS-MOTION FOR SUMMARY JUDGMENT**

This matter comes on for disposition by summary judgment. Taxpayer filed its motion for summary judgment and its memorandum in support of its motion on May 17, 1999. The Department of Revenue filed its cross-motion for summary judgment and memorandum in support of its cross-motion for summary judgment on June 23, 1999. The taxpayer filed a reply on July 6, 1999.

The issue in this case is whether wages paid to employees for the years 1990, 1991 and 1992 while being trained ("trainee wages") are includible in the base for calculating the training expense credit ("TEC") provided in Section 201(j) of the Illinois Income Tax Act.¹ The parties stipulated in a pre-trial order that the amount of wages paid to trainees

¹ Unless otherwise noted, all statutory references are to 35 ILCS 5/101, *et seq.*, the Illinois Income Tax Act ("IITA").

while being trained during the years 1990, 1991, and 1992 and the amount of the credit involved are as follows:

Year	Wages	Credit
1990	\$20,817,206	\$333,076
1991	\$29,614,878	\$473,838
1992	\$24,542,400	\$392,648

The parties agree that there is no genuine issue of material fact. The only issue to be decided is a legal issue. The section of the statute that sets forth the TEC provides as follows:

Beginning with tax years ending on or after December 31, 1986, a taxpayer shall be allowed a credit against the tax imposed by subsection (a) and (b) under this Section for all amounts paid or accrued, on behalf of all persons employed by the taxpayer in Illinois or Illinois residents employed outside of Illinois by a taxpayer, for educational or vocational training in semi-technical or technical fields or semi-skilled or skilled fields, which were deducted from gross income in the computation of taxable income.

35 ILCS 5/201(j).

The Department issued its regulation regarding the TEC effective March 31, 1995. 9 Ill. Reg. 5824. The regulation specifies that wages paid to employees in training or to employees while they are training other employees qualify for the TEC. 86 Ill. Admin. Code § 100.2150. After the motions for summary judgment in this case were filed and argued, Borden Chemicals and Plastics, 312 Ill.App.3d 35, 726 N.E.2d 73 (1st Dist. 2000), and *cert. den.* 189 Ill.2d 656 (May 31, 2000) was decided.

Prior to the decision in Borden Chemicals and Plastics, the Department contended that trainee wages paid prior to the effective date of the regulations do not qualify for the TEC. As a result of that decision, the Department no longer contends that pre-March 31,

1995, trainee wages do not qualify for the credit. Deferring to the decision in Borden Chemicals and Plastics, the Department withdrew its cross-motion for summary judgment by written memorandum addressed to the administrative law judge dated July 27, 2000 and made part of this record.

Therefore, it is ordered that the taxpayer's motion is granted and taxpayer is entitled to a refund of tax for the years at issue in the stipulated amounts set forth above.

ENTER: July 27, 2000

Administrative Law Judge